ATTORNEY FOR APPELLANT:

JOSHUA E. LEICHT
Kokomo, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

NATHANIAL E. DODSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A05-0712-CR-693
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0606-FA-00109

April 30, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Nathaniel E. Dodson ("Dodson") pleaded guilty in Howard Circuit Court to Class A felony attempted murder, Class A felony rape, and Class A felony burglary and was sentenced to three concurrent terms of fifty years. Dodson appeals and claims that the trial court erred in sentencing him. We affirm.

Facts and Procedural History

In the early morning hours of June 3, 2006, Dodson broke into the home of A.W., who lived next door to Dodson's girlfriend. Dodson sneaked into A.W.'s bedroom and lay on top of A.W., who was asleep in bed. When A.W. awoke and tried to move her arm, Dodson cut her hand with a knife. This caused A.W. to scream, but Dodson told her to be quiet. A.W. kicked Dodson off the bed and attempted to run away. Dodson caught A.W. by the hair, hit her with his fists, and pushed her to the ground. Dodson then forcibly placed his penis inside A.W.'s mouth. A.W. bit down on Dodson's penis, which enraged him. Dodson then forcibly removed A.W.'s clothes and raped her.

Dodson went into the bathroom as A.W. begged him not to hurt her. Her pleas when unheeded; Dodson attempted to cut A.W.'s throat, but when that did not work, he stabbed A.W. repeatedly with a knife. A.W. collapsed to the floor due to blood loss. When Dodson again went to the bathroom, A.W. was able to grab her mobile phone, call 911, and place the phone under her bed. Dodson then came back out of the bathroom and kicked A.W. several times. When she did not move, Dodson left the house.

The police arrived to find A.W. on the floor, bleeding from her multiple wounds. A.W. was transferred from a local hospital, then flown by helicopter to a hospital in Indianapolis. A.W. survived but was hospitalized for three days. She suffered from a

collapsed lung and underwent three surgeries to repair damaged nerves and muscles. A.W. still bore scars from the attack at the time of Dodson's sentencing.

On June 7, 2006, the State charged Dodson with Class A felony attempted murder. On June 12, 2006, the State filed additional charges of Class A felony rape, and Class A felony burglary. On July 26, 2007, the parties entered into a plea agreement which called for Dodson to plead guilty as charged. In exchange, the agreement specified that Dodson's sentences on all three counts were to be served concurrently. The agreement provided that sentencing would otherwise be within the discretion of the trial court. The trial court accepted the plea agreement, and ordered a sentencing hearing.

At the conclusion of the sentencing hearing, the trial court found as aggravating that Dodson had two prior felony convictions for theft and that Dodson had previously violated the terms of his in-home detention. The court further found as aggravating that Dodson had committed multiple, separate offenses which were particularly heinous in nature. The trial court found as a mitigating circumstance that Dodson had pleaded guilty, but the court gave this little weight because of the substantial benefit Dodson received from the plea agreement. The trial court then concluded that the aggravators outweighed the mitigators and sentenced Dodson to fifty years on each conviction, to be served concurrently. Dodson now appeals.

Discussion and Decision

Dodson claims that the trial court erred in sentencing him to fifty years on each conviction. "[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." Anglemyer v. State, 868 N.E.2d

482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. Id. As explained in Anglemyer, a trial court may abuse its discretion by failing to issue a sentencing statement, or by issuing a sentencing statement that bases a sentence on reasons that are not supported by the record, that omits reasons both advanced for consideration and clearly supported by the record, or that includes reasons that are improper as a matter of law. Id. at 490-91. However, under the post-Blakely amendments to our sentencing statutes, a trial court can no longer be said to have abused its discretion by improperly weighing or balancing aggravating and mitigating circumstances. Id. at 491.

Dodson first claims that the trial court erred in considering his prior convictions as aggravating, given their relatively minor nature. To the extent that Dodson claims that the trial court erred in giving his criminal history too much weight, this is no longer a proper appellate argument. See id.

Dodson also argues, however, that the trial court considered several improper aggravators. Specifically, Dodson claims the trial court erred when it considered as aggravating that he had violated the terms of his in-home detention. Dodson admits that he violated the terms of the in-home detention to which he was sentenced following his 2001 theft conviction but claims that there was no evidence that he violated any probationary terms in his 1999 theft conviction. The trial court, however, did not find that Dodson had violated probation in the 1999 theft case. The court simply noted that

Dodson had been given a suspended sentence in both cases but had failed to comply with the in-home detention rules in the latter case.

Dodson also claims that there is no evidence regarding why he violated the terms of his in-home detention in the 2001 case, arguing that it could have been because he was unable to pay fees. This is sheer speculation.[1] If Dodson wished to challenge the reason why his placement in in-home detention was revoked, he should have done so at the time of the revocation. He cannot now, over six years later, collaterally attack the propriety of the revocation. The trial court properly considered as aggravating that Dodson had been given the opportunity of placement in in-home detention, yet squandered his chance by violating the rules of such placement. See Ind. Code § 35-38-1-7.1(a)(6) (2004 & Supp. 2007) (listing among circumstances which trial court may consider as aggravating that "[t]he person has recently violated the conditions of any probation, parole, or pardon, community corrections placement, or pretrial release granted to the person.").

We also reject Dodson's brief, but fantastic, claim that he had been successfully rehabilitated because of the approximately five years between his last conviction and the instant crimes. If Dodson had truly been rehabilitated, he would not have burglarized a home and savagely attacked and raped a sleeping young woman.

Dodson next claims that the trial court erred in considering as an aggravating factor that his acts constituted multiple and separate crimes. Dodson claims that the trial

[1] We note that when asked if there were any errors in his pre-sentence investigation report, Dodson clarified one matter, but made no factual corrections.

court should have advised him that it was going to use this as an aggravator, and that had the trial court done so, he might not have pleaded guilty. We are not persuaded.

First, Dodson fails to cite any authority supporting his claim that the trial court should have advised him of possible aggravating factors. Furthermore, to the extent that Dodson's claim is an attack on his decision to plead guilty, such a claim may not be made upon direct appeal. See Tumulty v. State, 666 N.E.2d 394, 395 (Ind. 1996). More importantly, it appears that the trial court, in commenting on the separate and multiple crimes Dodson committed, was simply considering the nature and circumstances of Dodson's crimes.[2] This is not impermissible. See Smith v. State, 872 N.E.2d 169, 178 (Ind. Ct. App. 2007), trans. denied. By pleading guilty to burglary, rape, and attempted murder, Dodson was well aware that the trial court could use the nature and circumstances the crimes committed as aggravating factors. The trial court was well within its discretion to consider such as aggravating.

Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is "inappropriate in light of the nature of the offense and the character of the offender." The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Although Dodson refers to his sentence as

[2] The relevant portion of the trial court's sentencing statement, in context, reads:

> Certainly it is aggravating and the court would regard it as such that these offenses, all committed at the same time, so to speak, and it's the same victim, were multiple, separate crimes. They were particularly heinous, brutal, unprovoked, senseless. Twenty year old victim in her own house for no reason whatsoever being attacked and if not for the grace of God, her ability to contact the police on her own after having gone through such a brutal attack, this may have been a very different time of case.

Sentencing Tr. p. 29.

"inappropriate," he does not fully develop a separate argument under Indiana Appellate Rule 7(B). Regardless, we do not consider Dodson's fifty-year sentence to be inappropriate.

Dodson is a felon who has failed to conform his behavior to the rules of society when shown lenience in the past. In his latest episode of criminal behavior, Dodson broke into the home of a young woman, attacked her while she slept, and tried to force her to perform oral sex upon him. When she resisted, Dodson forcibly raped her. When she begged Dodson not to hurt her further, Dodson stabbed his helpless victim multiple times, leaving her for dead on the floor. Given the particularly brutal nature of Dodson's crimes, we cannot say that his fifty-year sentence is inappropriate.

Affirmed.

MAY, J., and VAIDIK, J., concur.